



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**CIVIL SUIT NO. 23 OF 1999**

**ROY M. GONTIER T/A LIGHT AVIATION ENGINEERING.....PLAINTIFF**

**VERSUS**

**KENYA AIRPORTS AUTHORITY.....DEFENDANT**

**RULING**

There is before me an application by way of Chamber Summons for orders that TAYO ENTERPRISES be added as an interested party in this suit and that the order of this court given on 11th March, 1999 and all consequential orders made thereafter be stayed pending the hearing and determination of the interested party's application for review of this court's order of 11th March, 1999 aforesaid.

The grounds upon which the orders are sought have been set out in the body of the application which is supported by an affidavit of one Taison Oloo, the Managing Director of Tayo Enterprises.

The said application is opposed and grounds of opposition have been filed to that effect alongside a replying affidavit sworn by the plaintiff. The provisions of law upon which the application is grounded are section 3A and 63 of the Civil Procedure Act and Orders 1 Rule 10 and O.21 rule 22 of the Civil Procedure Rules.

The intended interested party is said to be a tenant in occupation of the suit premises, a subject of the dispute between the plaintiff and the defendant herein. That notwithstanding, the said interested party was not made a party nor was it aware of the proceedings that took place leading to the eviction order. It is also alleged that both the plaintiff and the defendant knew of the said occupation but chose not to inform the interested party of the proceedings. The order made has affected it yet it was not made a party to the proceedings that led to the said order.

I have heard both learned counsel in this application. As at the time of filing this application, the plaintiff had in his favour an order entitling him to take possession of the suit premises. It was at the execution stage that the interested party came to court.

I have looked at the pleadings. The plaintiff's cause of action could only be adjudicated against the defendant alone. If there was any other arrangement between the defendant and the intended interested party, the plaintiff would be a stranger thereto. There is, to put it differently, no privity between the plaintiff and the intended third party.

It will also be noted that, it is the plaintiff who instituted the suit against the defendant for breach of tenancy. The acts complained of were committed long before the intended third party came into the picture. What rights, one may ask, has the plaintiff against the intended third party and vice versa? I see

non. There would be no issues for determination between the two going by the pleadings before me.

The intended third party has annexed what it says is a copy of the lease between it and the defendant. As rightly pointed out by the learned counsel for the plaintiff, the said lease is invalid. Section 40 of the Registered Titles Act, 281 Laws requires that a lease for a period of more than 5 years must be registered. The same import is to be found in section 107 of the Indian Transfer of Property act.

A look at the lease exhibited will show that it has only been executed by the tenant but not the defendant, it has not been stamped and has not been stamped and has not been registered. Above all, if it forms a contract, it will be between the intended third party and the defendant but not the plaintiff.

With respect, if the intended third party has any remedy, it would be against the defendant.

I have been asked to stay the order given on 11th march, 1999. I bear in mind that full arguements have not been made on the prayer for review. However, I am unable to grant an order of stay for two basic reasons. The first is that the defendant had addressed the issue of the third party in the suit premises and so the order of the court covered the said third party. The second reason is that to grant a stay shall deprive the plaintiff of the rights granted after arguments have been made in respect thereof; To do so shall cause more injustice to the plaintiff.

Accordingly the application by the intended third party is hereby dismissed with costs.

Order accordingly.

Dated and delivered at Nairobi this 28th day of May, 1999.

A. MBOGHOLI MSAGHA

JUDGE